

## Death and legal family formats in the UK: Scotland

by Kenneth Norrie <sup>1</sup>

*The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*

Edited by Kees Waaldijk,<sup>2</sup> Marie Digoix,<sup>3</sup> Natalie Nikolina,<sup>2</sup> Giuseppe Zago,<sup>2</sup> Daniel Damonzé,<sup>2</sup> Arianna Caporali,<sup>3</sup> Kamel Nait Abdellah <sup>3</sup>

Published by INED, Paris, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu)

Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 6 – Death)

© 2017 Kenneth Norrie

<sup>1</sup> Professor Kenneth Mck. Norrie (Professor of Law, University of Strathclyde, Glasgow, Scotland) is grateful for the useful comments that Dr Andy Hayward (Lecturer in Family Law, Durham Law School, Durham University) made on an earlier version of the answers in this section of the database.

<sup>2</sup> [Grotius Centre for International Legal Studies](#), Leiden University, Netherlands, [www.leiden.edu](http://www.leiden.edu).



<sup>3</sup> Institut national d'études démographiques, Paris, France, [www.ined.fr](http://www.ined.fr).



**Recommended citation:**  
K. Norrie, 'Death and legal family formats in the UK: Scotland', in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu) (question 6.x).

## Acknowledgment

The research leading to these results has received funding from the European Union's Seventh Framework Programme (FP7/2007-2013) under grant agreement no. 320116 for the research project FamiliesAndSocieties, [www.familiesandsocieties.eu](http://www.familiesandsocieties.eu).



# FamiliesAndSocieties

## Disclaimer

This paper and this database contain information with a scientific aim. Nothing in this paper and in this database should be seen as legal advice. Not all nuances and exceptions are included, and there may be errors and further legal developments. The experts, the authors, the editors, the Institut national d'études démographiques and Leiden University cannot be held liable for any inaccurate or incomplete information in this paper or in this database. More particularly, they cannot be held liable for any damage or consequences from the direct or indirect use of contents of this paper or database.

## The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

## Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu). There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

## About the questionnaire

The [full text of the questionnaire](#) can be found in the paper:

K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper* 64(2016), [www.familiesandsocieties.eu](http://www.familiesandsocieties.eu).

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

## About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

Yes	Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less.
Yes, but	Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”.
No, but	No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes.
No	No, this is not so in the law of this country/jurisdiction.
Doubt	The law is unclear (the law does not “know” the answer).
?	No information was available.
N/A	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
X	This question was not asked for this legal family format.
Open question	Question without answer codes like Yes and No.
Empty cell	For this year the question was not asked or not answered.

### The six papers about Scotland

The answers concerning Scotland can be found in the [interactive database](#) and in the following six papers (all of which are published in open access in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu)):

#### Formalisation of legal family formats in the UK: Scotland by Kenneth Norrie (Section 1)

#### Income, troubles and legal family formats in the UK: Scotland by Kenneth Norrie (Section 2)

#### Parenting and legal family formats in the UK: Scotland by Kenneth Norrie (Section 3)

#### Migration and legal family formats in the UK: Scotland by Kenneth Norrie (Section 4)

#### Splitting up and legal family formats in the UK: Scotland by Kenneth Norrie (Section 5)

#### Death and legal family formats in the UK: Scotland by Kenneth Norrie (Section 6)

So this paper is based on **Section 6 (Death)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 6.1 Tenancy continuation
- 6.2 Property at death
- 6.3 Inheritance
- 6.4 Inheritance tax
- 6.5 Survivor’s pension
- 6.6 Wrongful death
- 6.7 General background regarding death

In the following pages of this paper, first the answer to question 6.7 is presented, followed by the answers to questions 6.1 to 6.6.

**6.07 - General background regarding death (Open question)**

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, legal-cultural, etc.) that may be relevant for the understanding your answers above regarding death, then please do so here.

**The backdating of survivors' pensions continues to be politically and legally contentious: see R Wintemute, "Does EU Law Permit Unequal Survivor's Pensions for Same-Sex Couples?" (2014) 43 INDUSTRIAL LAW JOURNAL 506 (where he suggests the answer is "no").**

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Death and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-UK\\_SC-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.01 - Tenancy continuation**

When the partner who holds the rental contract dies, does the other partner then have a right to continue to rent the home?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 1980	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 Yes, but 2001	2016 Yes, but 2001
Yes, but 0000	N/A 0000		N/A 0000	Yes, but 1987	Yes, but 1999
				Yes, but 1980	No 0000
				No 0000	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>References to legal sources:</b> Tenants' Rights, Etc (Scotland) Act 1980, art. 13.</p> <p>Housing (Scotland) Act 1987, art. 52.</p> <p>Housing (Scotland) Act 2001, art. 22 and schedule 3.</p>		<p><b>References to legal sources:</b> Housing (Scotland) Act 2001, art. 22 and schedule 3.</p>		<p><b>References to legal sources:</b> Tenants' Rights, Etc (Scotland) Act 1980, art. 82.</p> <p>Housing (Scotland) Act 1987, art. 52.</p> <p>Housing (Scotland) Act 2001, art. 22 and schedule 3.</p> <p>Fitzpatrick v Sterling Housing Association [2001] 1 AC 27 (UK House of Lords 28 October 1999).</p>	
<p><b>Explanations and nuances:</b> Prior to the 1980 Act succession to tenancies was limited to widows, but since then a surviving spouse of either gender has been entitled to continue the tenancy held by their deceased spouse, but only if the tenancy was a "secure tenancy" within the meaning of the 1987 Act. Since the 2001 Act, the same result follows if the tenancy is a "Scottish secured tenancy" within the terms of the 2001 Act (and has included same-sex spouses since 2014).</p>		<p><b>Explanations and nuances:</b> A surviving civil partner is entitled to continue the tenancy held by a deceased civil partner, but only if the tenancy is a "Scottish secured tenancy" within the terms of the 2001 Act.</p>		<p><b>Explanations and nuances:</b> Under the 1980 and 1987 Acts a surviving opposite-sex cohabitant was entitled to continue the tenancy held by a deceased tenant, but only if the tenancy was a "secure tenancy" within the meaning of the Act. The same-sex surviving cohabitant could succeed as a "member of the tenant's family" only after same-sex couples were recognised as "family" for these purposes by the House of Lords in 1999 but this was a more limited right than for opposite-sex couples. The current law is contained in the 2001 Act which treats opposite-sex and same-sex cohabitants the same: both can succeed to the tenancy of their deceased cohabitant so long as the tenancy is a "Scottish secured tenancy" within the terms of the 2001 Act.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Death and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-UK\\_SC-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.02 - Property at death**

When one partner dies, do statutory rules consider as joint property any possessions acquired by either of them after they started this type of relationship? (In other words: would the surviving partner be deemed to own 50% of these possessions, while the other 50% are subject to relevant rules of inheritance law?)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 0000	2016 No, but 2014	2016 N/A 0000	2016 No, but 2005	2016 No 0000	2016 No 0000
	N/A 0000		N/A 0000		
<b>References to legal sources:</b> Succession (Scotland) Act 1964, arts. 8 and 9.		<b>References to legal sources:</b> Succession (Scotland ) Act 1964.  Civil Partnership Act 2004, art. 131.		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            Property is not regarded as joint property but on the death of one spouse the other will be entitled to claim various statutory rights of inheritance on intestacy up to certain absolute values (these are called "prior rights"). Spouses may in addition then claim one third of the moveable estate, or one half if there are no children (this entitlement is called "legal rights"): this claim is indefeasible by will and so is claimable from both the testate and the intestate estate. The property is not considered joint property but the effect is similar.</p>		<p><b>Explanations and nuances:</b>            Civil partners have the same claims as spouses, to prior rights under the 1964 Act and to the equivalent of legal rights, embodied in art. 131 of the 2004 Act.</p>		<p><b>Explanations and nuances:</b>            Cohabitants have no automatic entitlement to any part of the estate of their deceased partner.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Death and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-UK\\_SC-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.03 - Inheritance**

When one partner dies without testament, is the other partner then an inheritor?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 No, but 2006	2016 No, but 2006
	N/A 0000		N/A 0000	No 0000	No 0000
<b>References to legal sources:</b> Succession (Scotland) Act 1964.		<b>References to legal sources:</b> Succession (Scotland) Act 1964.  Civil Partnership Act 2004, art. 131.		<b>References to legal sources:</b> Family Law (Scotland) Act 2006, art. 29.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      A spouse will inherit what are called "prior rights" from an intestate estate, up to certain absolute values. Thereafter a spouse is entitled to one third or one half of the moveable estate (depending on whether there are surviving children), this on both testacy and intestacy. If anything remains, a spouse will inherit the residue if there are no superior claims by children, siblings or parents.</p> <p>It is worth noting that the whole of Scottish succession law is currently (2016) under review by the Scottish Government and it is likely that major changes will be brought before the Scottish Parliament within a few years. These changes are likely to include amending the rules on intestate succession (currently the Succession (Scotland) Act 1964) and in relation to claims by surviving cohabitants (currently the Family Law (Scotland) Act 2006, s. 29).</p>		<p><b>Explanations and nuances:</b>                      A civil partner will inherit what are called "prior rights" from an intestate estate of their deceased partner, up to certain absolute values. Thereafter the civil partner is entitled to one third or one half of the moveable estate (depending on whether there are surviving children), this on both testacy and intestacy. If anything remains the surviving civil partner will inherit the residue if there are no superior claims by children, siblings or parents.</p> <p>It is worth noting that the whole of Scottish succession law is currently (2016) under review by the Scottish Government and it is likely that major changes will be brought before the Scottish Parliament within a few years. These changes are likely to include amending the rules on intestate succession (currently the Succession (Scotland) Act 1964) and in relation to claims by surviving cohabitants (currently the Family Law (Scotland) Act 2006, s. 29).</p>		<p><b>Explanations and nuances:</b>                      Prior to the 2006 Act a surviving cohabitant had no claim to the estate of their deceased partner. A surviving cohabitant still has no entitlement, but he or she may ask the court to make an award from the intestate estate, up to an amount no greater than a spouse would have been entitled to in the same circumstances.</p> <p>It is worth noting that the whole of Scottish succession law is currently (2016) under review by the Scottish Government and it is likely that major changes will be brought before the Scottish Parliament within a few years. These changes are likely to include amending the rules on intestate succession (currently the Succession (Scotland) Act 1964) and especially in relation to claims by surviving cohabitants (currently the Family Law (Scotland) Act 2006, s. 29) which has had many problems in application.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Death and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-UK\\_SC-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.04 - Inheritance tax**

Is the surviving partner exempted from paying inheritance tax (or required to pay less than a mere friend would have to pay)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1975	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 No 0000	2016 No 0000
No 0000	N/A 0000		N/A 0000		
<b>References to legal sources:</b> Finance Act 1894.  Finance Act 1975.  Inheritance Tax Act 1984, article 18.		<b>References to legal sources:</b> Inheritance Tax Act 1984, article 18, as amended by Tax and Civil Partnership Regulations 2005, SI 2005/3229, art. 7(5).		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            Estate Duty was introduced by the Finance Act 1894 but a spousal exemption was only introduced when the 1975 Act replaced estate duty with Capital Transfer Tax (CTT). CTT was remodelled and renamed Inheritance Tax by the 1984 Act, which contains the spousal exemption and remains the law today.</p>		<p><b>Explanations and nuances:</b>            Civil Partners were brought within the spousal exemption to Inheritance Tax when civil partnership was introduced in 2005.</p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Death and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-UK\\_SC-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.05 - Survivor's pension**

When one partner dies while being employed, is the surviving partner then normally entitled to a survivor's pension?

(For example on the basis of statutory law, and/or on the basis of a collective labour agreement or arrangements of the employer.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1988	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 No, but 0000	2016 No, but 0000
Yes, but 1978	N/A 0000		N/A 0000		
No 0000					

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>References to legal sources:</b>            Social Security and Pensions Act 1975.</p> <p>Social Security Act 1986.</p> <p>Equality Act 2010, sched. 9 para 18.</p> <p>Walker v Innospec [2015] EWCA Civ 1000 (England and Wales Court of Appeal).</p> <p>Marriage and Civil Partnership (Scotland) Act 2014.</p> <p>Barber v Guardian Royal Exchange [1990] 2 CMLR 513.</p>		<p><b>References to legal sources:</b>            HM Gov's "Review of Survivor Benefits in Occupational Pension Schemes".</p> <p>Civil Partnership Act 2004.</p> <p>Walker v Innospec [2015] EWCA Civ 1000 (England and Wales Court of Appeal).</p>		<p><b>References to legal sources:</b></p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Occupational pension schemes did not typically include provision for survivors' pensions until the 1975 Act came into effect in 1978, but that Act provided only for female survivors: so the answer at that time was yes, but only if the survivor was female. The Social Security Act 1986, which came into effect in 1988, extended this to male survivors. Both Acts allowed accrued rights only from the date the Acts came into force. The European Court of Justice in Barber v Guardian Royal Exchange required benefits to be provided equally to men and women and since then survivor pensions to spouses have been valued only on rights accrued since 1988. When same-sex marriage was introduced in 2014, survivor pensions could be limited to rights accrued since 5th December 2005 (when the Civil Partnership Act 2004 came into force): this difference in treatment is legislatively not contrary to the Equality Act 2010: 2010 Act, sched. 9 para. 18. And the Court of Appeal in England and Wales held that this was not contrary to the European Union Law. So for many married same-sex spouses, the value of their survivor's pension will be less than that of opposite-sex spouses.</p> <p>The backdating of survivors' pensions continues to be politically and legally contentious: see R Wintemute, "Does EU Law Permit Unequal Survivor's Pensions for Same-Sex Couples?" (2014) 43 INDUSTRIAL LAW JOURNAL 506 (where he suggests the answer is "no").</p>		<p><b>Explanations and nuances:</b>                      When civil partnership was introduced, survivor pensions could be limited to rights accrued since 5th December 2005 (when the 2004 Act came into force): this difference in treatment is legislatively not contrary to the Equality Act 2010: 2010 Act, sched. 9 para. 18. And the Court of Appeal in England and Wales held that this was not contrary to the European Union Law. So for many civil partners, the value of their survivor's pension will be less than that of opposite-sex spouses. See also the article by Wintemute, mentioned under Marriage.</p>		<p><b>Explanations and nuances:</b>                      Survivor's pensions are not mandated by the law, though many schemes permit an unmarried person (including of the same-sex) to nominate an individual to receive benefits on their death.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Death and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-UK\\_SC-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.06 - Wrongful death**

In case of wrongful death of one partner, is the other partner then entitled to compensation from the wrongdoer?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 1982	2016 Yes 2006
	N/A 0000		No 0000	No 0000	Doubt 2004
					No 0000

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>References to legal sources:</b> Damages (Scotland) Act 1976.</p> <p>Damages (Scotland) Act 2011.</p> <p>Marriage and Civil Partnership (Scotland) Act 2014.</p>		<p><b>References to legal sources:</b> Damages (Scotland) Act 1976.</p> <p>Civil Partnership Act 2004.</p> <p>Family Law (Scotland) Act 2006.</p> <p>Damages (Scotland) Act 2011.</p>		<p><b>References to legal sources:</b> Ghaidan v Godin-Mendoza (2004) UKHL 30 (UK House of Lords 21 June 2004).</p> <p>Administration of Justice Act 1982.</p> <p>Damages (Scotland) Act 1976.</p> <p>Family Law (Scotland) Act 2006.</p> <p>Damages (Scotland) Act 2011.</p>	
<p><b>Explanations and nuances:</b> Spouses have always been entitled to a loss of support award and a loss of society award (a bereavement award). This was put onto a statutory basis by the 1976 Act and the present law is contained in the 2011 Act. The 2014 Act opened marriage to same-sex couples and all married couples are included in the terms of the 2011 Act.</p>		<p><b>Explanations and nuances:</b> The Civil Partnership Act 2004 amended the 1976 Act to give civil partners a right to claim compensation on the death of their partner on the same basis as a spouse could claim; the current law is the Damages (Scotland) Act 2011.</p>		<p><b>Explanations and nuances:</b> The Administration of Justice Act 1982 amended the Damages (Scotland) Act 1976 to include (opposite-sex) cohabitants in the right under the 1976 Act to claim damages for wrongful death, both for loss of support and loss of society. The House of Lords in the case of Ghaidan v Godin-Mendoza decided that provisions relating to cohabitants ought where possible to be interpreted to include same-sex couples but it was not clear that the 1976 Act (as amended by the 1982 Act) could be so interpreted since it was gender-specific in its wording. The matter was put beyond all doubt by the Family Law (Scotland) Act 2006, and same-sex cohabitants are now treated in the same way as opposite-sex cohabitants. The current law is contained in the Damages (Scotland) Act 2011.</p>	